

(i) *Confidentiality.* (1) The Monitoring Reports, minutes, and any other additional information submitted for a particular agreement will be exempt from disclosure under 5 U.S.C. 552, except to the extent:

(i) It is relevant to an administrative or judicial action or proceeding; or

(ii) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(2) Parties may voluntarily disclose or make Monitoring Reports, minutes or any other additional information publicly available. The Commission must be promptly informed of any such voluntary disclosure.

[49 FR 45431, Nov. 15, 1984, as amended at 59 FR 67231, Dec. 29, 1994; 61 FR 11576, Mar. 21, 1996; 61 FR 40530, Aug. 5, 1996]

#### **§ 535.702 Agreements subject to Monitoring Report requirements.**

(a) Agreements subject to the Monitoring Report requirements of this subpart are divided into three classes, Class A, Class B and Class C. When used in this subpart:

(1) *Class A agreement* means an agreement that is subject to the definition set forth in § 535.502(a) and has market shares of 50 percent or more in half or more of its sub-trades.

(2) *Class B agreement* means an agreement that is subject to the definition set forth in § 535.502(a) but does not have market shares of 50 percent or more in half or more of its sub-trades.

(b) Classification of an agreement as “Class A” or “Class B” for purposes of its reporting obligations under this subpart shall be done by the Bureau of Economics and Agreement Analysis, based in the first instance on the market share data reported on the agreement’s Information Form pursuant to § 535.503, or on similar data otherwise obtained. Thereafter, before the beginning of each calendar year, the Bureau of Economics and Agreement Analysis shall determine whether the agreement should be classified as “Class A” or “Class B” for that year, based on the market share data reported on the agreement’s quarterly Monitoring Report for the previous second quarter (April–June).

(c) *Class C agreement* means an agreement that is subject to the definition set forth in § 535.502(b).

[61 FR 11576, Mar. 21, 1996, as amended at 61 FR 40531, Aug. 5, 1996]

#### **§ 535.703 Monitoring report for Class A agreements.**

The Monitoring Report form for Class A agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix C of this part. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 535.

[61 FR 11577, Mar. 21, 1996]

#### **§ 535.704 Monitoring report for Class B agreements.**

The Monitoring Report form for Class B agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix D of this part. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 535.

[61 FR 11577, Mar. 21, 1996]

#### **§ 535.705 Monitoring report for Class C agreements.**

The Monitoring Report form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix E of this part. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 535.

[61 FR 11577, Mar. 21, 1996]

#### **§ 535.706 Filing of minutes—including shippers’ requests and complaints, and consultations.**

(a) *Meetings.* For purposes of this subpart, the term *meeting* shall include any meeting of the parties to the agreement, including meetings of their agents, principals, owners, committees, or subcommittees of the parties authorized to take final action on behalf of the parties. Where the agreement so authorizes, this includes final action by telephonic or personal polls of the membership.

(b) *Content of minutes.* Except as provided in paragraph (c) of this section, conferences, interconference agreements, agreements between a conference and one or more ocean common carriers, pooling agreements, equal access agreements, discussion agreements, maritime terminal conferences, and marine terminal rate fixing agreements shall, through a designated official, file with the Commission a report of each meeting defined in paragraph (a) of this section describing all matters within the scope of the agreement which are discussed or considered at any such meeting, including shippers' requests and complaints, as well as consultations with shippers and shippers' associations, and shall indicate the action taken. These reports need not disclose the identity of parties that participated in discussions or the votes taken.

(c) *Exemption.* No minutes need be filed under paragraph (b) of this section with respect to any discussion of or action taken with regard to:

(1) Rates that, if adopted, would be required to be published in the pertinent tariff except that this exemption does not apply to discussions limited to general rate policy, general rate changes, the opening or closing of rates, or service or time/volume contracts; or

(2) Purely administrative matters.

(d) *Serial numbers.* (1) Each set of minutes filed with the Commission should be assigned a number. For example, a conference filing minutes of its first meeting upon the effective date of this rule should assign Meeting No. 1 to its minutes, the next meeting will be assigned Meeting No. 2, and so on.

(2) Any conference or rate agreement which, for its own internal purposes, has a system for assigning sequential numbers to its minutes in a manner which differs from that set forth in paragraph (d)(1) of this section may continue to utilize its own system thereof.

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984. Redesignated and amended at 57 FR 40619, Sept. 4, 1992. Redesignated and amended at 61 FR 11576, Mar. 21, 1996; 64 FR 11243, Mar. 8, 1999]

**§ 535.707 Other documents.**

Each agreement required to file minutes pursuant to § 535.706 shall list in said minutes all reports, circulars, notices, statistics, analytical studies or other documents, not otherwise filed with the Commission pursuant to this subpart, which are distributed to the member lines and are used to reach a final decision on any of the following matters:

(a) Revenue projections and plans. (This would exclude individual rate adjustments but would include general rate adjustments, surcharges and other items affecting shipper costs.)

(b) Studies regarding proposed changes to the conference agreement or its membership.

(c) Non-conference competition.

(d) Changes in the nature and type of transportation service generally and specifically at individual ports or points.

(e) Trade tonnage requirements, vessel utilization and vessel replacement plans.

(f) Conference participation in trade (market share).

(g) The exercise of the right of independent action.

(h) Development of transportation technology and intermodal services.

(i) Malpractices.

(j) Use of service contracts, time volume rate schemes and loyalty contracts.

(k) Conference relationship with shippers and shipper groups.

(l) Governmental and other foreign requirements affecting the conference.

[57 FR 40619, Sept. 4, 1992. Redesignated and amended at 61 FR 11576, Mar. 21, 1996]

**§ 535.708 Retention of records.**

Each agreement required to file minutes pursuant to this subpart shall retain a copy of each document listed in said minutes for a minimum period of 3 years after the date the document is distributed to the members. Such documents may be requested by the Director, Bureau of Economics and Agreement Analysis, in writing by reference to a specific minute, and shall indicate that the documents will be received in confidence. Requested documents shall